IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

OP.No. 5950 of 2003(G)

PETITIONER:

V.UNNIKRISHNAN, ASSISTANT ENGINEER
(CIVIL), MECHANICAL SUB DIVISION,
KERALA AGRICULTURAL UNIVERSITY, VELLANIKKARA,
PIN 680 656.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SMT.RESMI G. NAIR

RESPONDENTS:

1. KERALA AGRICULTURAL UNIVERSITY,
REPRESENTED BY ITS REGISTRAR, OFFICE OF THE
KERALA AGRICULTURAL UNIVERSITY, KERALA
AGRICULTURAL UNIVERSITY P.O., VELLANIKKARA,
THRISSUR DISTRICT.

2. VICE CHANCELLOR,
KERALA AGRICULTURAL
UNIVERSITY, KERALA AGRICULTURAL UNIVERSITY P.O.,
VELLANIKKARA, THRISSUR DISTRICT.

Addl.R3. K.N.SATHEES
OVERSEER GRADE I, ENGINEERING SUB DIVISION
COLLEGE OF AGRICULTURE
VELLAYANI-P.O., THIRUVANANTHAPURAM
(impleaded as per order dated 26.6.2003 in I.A.No.777/03)

Addl.R4. ANIL KUMAR.K.M.
S/O MADHAVAN, ASWATHY,
CHERUMUKKU TEMPLE ROAD, THRISSUR
(impleaded as per order dated 21.1.04 in I.A.15299/03)

Addl.R5. S.RAJENDRA PRASAD
1st GRADE OVERSEER MECHANICAL SUB DIVISION
KERALA AGRICULTURAL UNIVERSITY
VELLANIKKARA, THRISSUR,

RESIDING AT SANTHOSH BHAVAN,
VELLANIKKARA-P.O., THRISSUR
(impleaded as per order dated 12.7.04 in I.A.8642/04)

BY ADV. SRI.N.D.PREMACHANDRAN, SC, AGRL.UNTY.
ADV.SRI.RANJITH THAMPAN, SC, KERALA AGRL.UTY.
DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
DR.K.P.KYLASANATHA PILLAY
SRI.ARUN.B.VARGHESE
SMT.SREEDEVI KYLASANATH
SRI.T.P.DEYANANTHAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 17.12.07, ALONG WITH OP NO. 25069 OF 2000, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the relevant extract of the order No.GA/J1/20464/99 of the 1st respondent.

Ext.P2: True copy of the G.O.(MS)No.247/92/AD dated 29.9.92.

Ext.P3: True copy of the G.O.(MS)No.211/87/H.Edn. dated 24.7.1987.

Ext.P4: True copy of the judgment in O.P.No.1309/85-A dated 12.8.1987 of this Hon'ble Court.

Ext.P5: True copy of the order No.GA/J1/20464/99 dated 3.10.2002 issued by the KAU.

Ext.P6: True copy of the representation submitted by the petitioner before the 1st respondent dated 7.11.2002.

Ext.P7: True copy of the Government letter No.16700/AF2/01/AD.

Ext.P8: True copy of the letter No.GA/A3/35644/02 dated 14.2.2003 of the 1st respondent.

Ext.P9: True copy of the order No.GA/J1/30356/2000 dated 6.1.2003 of the 1st respondent.

Ext.P10: True copy of the counter affidavit filed by Sri.K.R. Muraleedharan in O.P.No.25069/2000 H.dated 7.12.2000.

Ext.P11: True copy of the order No.GA/A3/31372/2002 dated 18.10.2002 of the 2nd respondent.

Ext.P12: True copy of the letter No.GS5-2095/2001 dated 29-1-2002 from the Secretary to Govt. addressed to the 1st respondent.

Ext.P12(a): True copy of the relevant portion of the amendments.

Ext.P13: True copy of the letter No.G85-2095/2001 dated 6.5.2003 of the Secretary to Governor.

Ext.P14: True copy of the order No.GA/J1/20464/99 dated 15.4.2000 of the Registrar, Kerala Agricultural University.

Ext.P15: True copy of the order No.GA/A3/40653/90 dated 20.5.1993 of the Kerala Agricultural University.

Ext.P16: True copy of the order No.GA/J1/30356/2000 dated 28.6.2001 of the Registrar, Kerala Agricultural University.

Ext.P17: True copy of the order No.GA/A3/23538/01 dated 5.11.2003 of the Vice Chancellor of Kerala Agricultural University.

Ext.P18: True copy of the order No.GA/A3/7235/03 dated 15.12.2003 of the Vice Chancellor of Kerala Agricultural University.

RESPONDENT'S EXHIBITS:

Ext.R1(a): A copy of the proceedings of the proceedings No.GA/J1/30356/2000 dated 13.5.2003 of the 1st respondent.

Ext.R3(a): True copy of the G.O.(MS)No.247/92/AD dated 29.9.1992.

Ext.R3(b): True copy of the G.O.(MS)No.211/87/H.Edn. dated 24.7.87.

Ext.R3(c): True copy of the judgment in O.P.1309/85-A of this Hon'ble court.

Ext.R4(a): True copy of the order No.GA/J1/30356/2000 dated 13.5.2003 issued by the Dy. Registrar of Administration.

C.M.P.N0.10450/03 in O.P.No.5950.03

Dismissed

SD/-

A.K.BASHEER, JUDGE

A.K.BASHEER, J.

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O.P.No.25069 OF 2000 & O.P.No.5950 OF 2003

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Dated this the 17th day of December 2007

JUDGMENT

Can Diploma in Agricultural and Rural Engineering (for short 'DARE') awarded by the Kerala Agricultural University be treated as a requisite qualification for promotion to the cadre of Assistant Engineer in the Kerala Agricultural University?

2. The above question has primarily arisen for consideration in these two original petitions in the following facts and circumstances:

3. O.P.25069/2000 is being treated as the leading case and the documents and parties in that original petition shall be referred to in this judgment hereafter.

4. Petitioner who had joined service of the University as Overseer Grade-II on October 24, 1988 in the Engineering Sub Division of the University is presently working as Overseer Grade-I since February 3rd 1997. It is not in dispute that petitioner possesses the qualification of 'DARE' as well as Diploma in Civil Engineering. At the time of his initial

appointment, petitioner possessed only 'DARE'. Petitioner obtained the Diploma in Civil Engineering in 1997. According to the petitioner, he ought to have been promoted to the cadre of Assistant Engineer with effect from April 15, 2000 in one of the two vacancies that had arisen in the University on the strength of his qualification in Diploma in Civil Engineering. But the University ignored his right and eligibility for promotion, and respondents 2 and 3 who have got only 'DARE' to their credit, were promoted with effect from the date of arising of the two vacancies referred to above. Petitioner prays for issuance of a writ of certiorari to quash Ext.P6 by which the University promoted respondents 2 and 3. He further prays for issue of a writ of mandamus or such other appropriate writ, order or direction to the University to promote him to the post of Assistant Engineer with effect from April 15, 2000.

5. Respondent no.3 in O.P.25069/00 has preferred O.P.5950/03. He seeks to quash Ext.P8 communication issued by the University informing him that he was liable to be reverted to

the cadre of Overseer Grade-I, since he was found to be ineligible to hold the above post 'as per the statute in existence'. He further prays for a declaration that he is fully qualified to hold the post of Assistant Engineer (Civil) on the strength of 'DARE'.

6. As indicated above, the crux of the issue that falls for consideration in these two original petitions is whether 'DARE' is a sufficient qualification for promotion to the cadre of Assistant Engineer (Civil) from the cadre of Overseer Grade-I. Qualification, method of recruitment, etc. to various posts in the University are prescribed by statutes issued under Section 63 of the Kerala Agricultural University Act, 1970. The relevant clause which deals with the qualification for promotion to the post of Assistant Engineer, as prescribed in SRO 668/73 dated 22/10/73 with which we are concerned in these original petitions, is extracted hereunder:

" Junior Engineer:

. . . . . .

Qualification for promotion:

1. Must possess any of the diplomas mentioned below:

a) Upper Subordinate diploma of the College of Engineering, Guindy.

b) Diploma in the concerned branch of Engineering of the Kerala University or Diploma recognised by the Government of Kerala as equivalent thereto.

. . . . . ”

7. It is contended by the petitioner that he holds Diploma in Civil Engineering issued by the Director, State Board of Technical Education under the Government of Kerala. The said Diploma has been recognized by the Government of Kerala as a requisite qualification to hold the post of Assistant Engineer (Civil). Learned counsel contends that the nature of duties of Assistant Engineer (Civil) in the University being such, only a diploma holder in Civil Engineering is entitled to be promoted to the cadre of Assistant Engineer (Civil). Per contra, it is contended by learned counsel for respondent no.3 that the Diploma in Civil Engineering obtained by the petitioner cannot be treated as equivalent to the Diploma in the concerned branch of Engineering as prescribed by the statute. In other words, the

contention is that diploma issued by the Director of Technical Education can never be treated as equivalent to a diploma in the concerned branch of engineering issued by the Kerala University. Similarly, petitioner has not produced any documents to show that Diploma issued by the State Board of Technical Education has been recognized by the Government of Kerala till date. Alternatively, respondent no.3 has raised a further contention that 'DARE' has been admittedly recognized as a sufficient qualification to be appointed as Overseer Grade-II in the University. More importantly 'DARE' has been recognized as a sufficient qualification for promotion to the post of Assistant Executive Engineer which is the promotion post of Assistant Engineer in the University.

8. In the counter affidavits filed by the University in these two original petitions, the issue has been complicated unnecessarily. While the initial stand of the University was that Diploma in Civil Engineering was not good enough for promotion to the cadre of Assistant Engineer, later, the University took a

volte face and contended that 'DARE' will not also be sufficient for claiming promotion to the cadre of Assistant Engineer. It is admitted by the University that 'DARE' was treated as the requisite qualification for promotion to the cadre of Assistant Executive Engineer with effect from January 29, 2003 by virtue of the amendment brought into the Statutes after obtaining assent from the Chancellor of the University. It is beyond controversy that the above amendment operated only prospectively.

9. It is further pointed out by the University that the proposal for amendment of the statute to treat 'DARE' as a sufficient qualification for promotion to the cadre of Assistant Engineer was also passed by the General Council and forwarded to the Governor for his assent way back in the year 1998. But the Governor had sent back the proposal to the University for reconsideration. Later, the University had forwarded it again to the Chancellor for consideration. Learned Standing Counsel submits that the University is awaiting assent from the

Chancellor for the proposed amendment.

10. The admitted position is that going by the statute, 'DARE' is not considered to be a requisite qualification for promotion to the post of Assistant Engineer (Civil) in the University as on today. But as noticed already, respondents 2, 3 and 5 others had been promoted as Assistant Engineer from the cadre of Overseer Grade-I on the strength of 'DARE' possessed by them. Those beneficiaries of promotion had been holding the higher post for the last more than 7-8 years.

11. Petitioner had preferred the original petition in the year 2000 with the grievance that his claim for promotion on the strength of Diploma in Civil Engineering obtained by him was overlooked by the University without any valid or justifiable reasons. It is on record that respondent no.2 (petitioner in O.P.5950/03) has been continuing in the cadre of Assistant Engineer on the strength of the interim order passed by this court. In the meanwhile, petitioner had preferred another writ petition as W.P.No.6634/07 seeking promotion to one of the

vacancies which had arisen in the university in the cadre of Assistant Engineer subsequently. The said writ petition was disposed of by this court on November 16, 2007 with a direction to the University to consider the request of the petitioner in accordance with law. It is submitted by learned counsel at the bar that the University is yet to take a decision in the matter.

12. Coming back to the cases on hand, the stand taken by the University in these two cases has not only confounded the confusion but also has led to unwanted and avoidable heart burn to its employees. The issue ought have been sorted out by the University a long time ago. The equivocal or ambivalent stand taken by the University has helped none; but sadly it has led to acrimonious litigations among its employees. If the Chancellor took more than 2-3 years to express his view in the matter of amendment of the statute in respect of the qualification for promotion to the cadre of Assistant Engineer, the University by itself did not help to save the situation. The University had obviously slept over the matter for 5-6 years and it is only very

recently that the University has chosen to take up the issue with the Chancellor yet again. But as rightly pointed out by learned counsel for the petitioner, the University could not have overlooked the mandates contained in the statute and given promotion to respondents 2 and 3 and 5 others on the basis of their 'DARE' qualification possessed by them. But as noticed already, the University had interpreted the statute in such a way as to treat 'DARE' as sufficient qualification for promotion.

13. In this context, learned counsel for respondent No.3 has invited my attention to a decision rendered by a Full Bench of this court in **Manager, M.P.V.H.S. School V. Girija [2003 (1) KLT 935] F.B**. It is true that in the above decision the Full Bench held that the interpretation given by a rule making authority to a particular rule that has held the field for years, should not be upset and unsettled by a different judicial interpretative process, and that too after a long lapse of time. The attempt of the learned counsel appears to be to contend for the position that the stand taken by the University treating

'DARE' as sufficient qualification for promotion to the cadre of Assistant Engineer for the last about a decade should not be allowed to be unsettled on the plea that the statutes did not recognize 'DARE' as a sufficient qualification for promotion, I am afraid the petitioner cannot get any support from the ratio laid down by the Full Bench in the above decision.

14. The question that has cropped up in these original petitions, as indicated earlier, is only whether the statute recognized 'DARE' as a requisite qualification for promotion to the cadre of Assistant Engineer. It is fairly conceded by learned counsel for respondent no.3 that the statute does not specifically refer to 'DARE' as a sufficient qualification. But the contention of the learned counsel is that 'DARE' is issued by the Agricultural University itself whereas Diploma in Civil Engineering is issued by the State Board of Technical Education. Learned counsel has also invited my attention to Ext.R3(a) and (b) in this context. In Ext.R3(b) the Government had ordered that 'DARE' issued by the Kerala Agricultural University be

recognized as a sufficient qualification for the post of work shop Inspector Grade II in Poly Technics and Technical High Schools. I am afraid Ext.R3(b) will not in any way help the case of respondent no.3. But learned counsel has raised a further contention that going by the qualifications prescribed in the statute petitioner will not also be eligible for promotion to the cadre of Assistant Engineer because his qualification is not one of the qualifications prescribed under the statute.

15. Having heard learned counsel for the parties and having perused the materials on record, I am of the view that the University has to be directed to take a final decision in the matter to resolve the imbroglio that has subsisted for the last more than 7 years. I am persuaded to take this view for yet another reason. It is brought to my notice that in W.P.No.7357/07, a learned Judge of this court has already issued a direction to the University to take a decision in the matter pertaining to the very same issue. The learned Judge while referring to clarifications issued by the Registrar had also

referred to the amendment of the statutes and had in that context directed the University to take a final decision.

16. It is true that the petitioner has been clamouring for promotion ever since 2000. This original petition filed by him has been pending for the last more than 7 years. As mentioned earlier, the University has already addressed the Chancellor and requested him to take a decision on the proposal for amendment of the Statute. The entire imbroglio will be resolved, if the University takes a final decision in the matter keeping in view the subsequent amendment brought into the statute in relation to the qualification for promotion to the higher grade of Assistant Executive Engineer, particularly since the proposal for amendment in respect of promotion qualification to the Lower post of Assistant Engineer is pending consideration before the Chancellor. The University shall make a formal request to the Chancellor to expedite the matter.

17. The University shall take an appropriate decision in the matter as expeditiously as possible, at any rate, within three

months from the date of receipt of a copy of this judgment. Needless to mention that the University shall afford sufficient opportunity of hearing to all the parties concerned, including petitioner and respondents 2 to 5 and others who are likely to be affected by any order that may be passed by the University, before a decision is taken in the matter.

The writ petitions are disposed of in the above terms.

(A.K.BASHEER, JUDGE)

jes

A.K.BASHEER, J.

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O.P.No.25069 OF 2000 &
O.P.No.5950 OF 2003

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JUDGMENT

Dated 17th Dec. 2007